

Law Offices of
SENNIGER, POWERS, LEAVITT AND ROEDEL
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
Telephone (314) 231-5400
Facsimile (314) 231-4342

RECEIVED
CENTRAL FAX CENTER

JAN 27 2006

FACSIMILE TRANSMITTAL COVER SHEET

DATE: 1/27/06 ATTORNEY DOCKET NUMBER: KCC 4843 (K-C 15,400)
PTO FACSIMILE NUMBER: 571-273-8300

PLEASE DELIVER THIS FACSIMILE TO: Mail Stop Appeal Brief-Patents
THIS FACSIMILE IS BEING SENT BY: Richard L. Bridge
NUMBER OF PAGES: 32 INCLUDING COVER SHEET

TIME SENT: 3:57PM OPERATOR'S NAME Michelle Grindstaff

CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to
the Patent and Trademark Office on the date shown below.

Michelle Grindstaff
Typed or printed name of person signing certification

M. Grindstaff
Signature

1-27-06
Date

Type of paper transmitted: Notice of Filing Brief (1);
Appeal Brief (30)

Applicant's Name: Tom K. Wentzel et al.

Serial No. (Control No.): 10/032,383 Examiner: Kidwell

Filing Date: 12/21/01 Art Unit: 3761

Application Title: DISPOSABLE ABSORBENT ARTICLE HAVING ONE PIECE
MECHANICAL FASTENING SYSTEM

IF YOU DO NOT RECEIVE ALL PAGES CLEARLY, CALL BACK AS SOON AS
POSSIBLE. CONFIRMING NUMBER IS (314) 231-5400.

RECEIVED
CENTRAL FAX CENTER
JAN 27 2006

KCC 4843
(K-C 15,400)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Tom K. Wentzel et al. Art Unit 3761
Serial No. 10/032,383
Filed December 21, 2001
Confirmation No. 5427
For DISPOSABLE ABSORBENT ARTICLE HAVING ONE PIECE MECHANICAL
FASTENING SYSTEM
Examiner Michele Kidwell

January 27, 2006

**NOTICE OF FILING BRIEF ON APPEAL FROM THE EXAMINER
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES**

TO THE COMMISSIONER FOR PATENTS,

SIR:

- * Appellant hereby files its Brief on Appeal to the Board of Patent Appeals and Interferences. This appeal is from the Examiner's decision mailed September 8, 2005, finally rejecting the claims. A Notice of Appeal was mailed December 8, 2005.
- * Please charge Deposit Account No. 19-1345 for the brief fee of \$500.00. If there are any additional charges in this matter, please charge Deposit Account No. 19-1345.

Respectfully submitted,

Richard L. Bridge, Reg. No. 40,529
SENNIGER POWERS
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
(314) 231-5400

RLB/tmg

VIA FACSIMILE 571-273-8300
Mail Stop Appeal Brief - Patents

JAN-27-2006 FRI 03:59 PM SENNIGER POWERS

FAX NO. 3142314342

P. 03/32

KCC 4843 (K-C 15,400)
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Tom K. Wentzel, et al. Art Unit: 3761
Serial No.: 10/032,383
Filed: December 21, 2001
Confirmation No.: 5427
For: DISPOSABLE ABSORBENT ARTICLE HAVING ONE PIECE MECHANICAL
FASTENING SYSTEM
Examiner: Michele Kidwell

January 27, 2006

APPEAL BRIEF

01/30/2006 CNGUYEN 00000024 191345 10032383
01 FC:1402 500.00 DA

Richard L. Bridge, Reg. No. 40,529
SENNIGER POWERS
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
(314) 231-5400

KCC 4843 (K-C 15,400)
PATENTTABLE OF CONTENTS

TABLE OF AUTHORITIES.....	.ii
I. REAL PARTY IN INTEREST.....	1
II. RELATED APPEALS AND INTERFERENCES.....	1
III. STATUS OF CLAIMS.....	2
IV. STATUS OF AMENDMENTS.....	2
V. SUMMARY OF CLAIMED SUBJECT MATTER.....	3
VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL.....	5
A. Claims 11-14, 16, 26, 28, 29, 31, 33 and 55 are unanticipated by and patentable over U.S. Patent No. 5,386,595 (Kuen et al.).....	5
Claim 55.....	5
Claim 11.....	10
B. Claims 7-9, 15, 30 and 35 are non-obvious in view of and patentable over U.S. Patent No. 5,386,595 (Kuen et al.)	12
Claim 7.....	12
Claim 35.....	14
VIII. CONCLUSION.....	15
CLAIMS APPENDIX.....	16
EVIDENCE APPENDIX.....	27
RELATED PROCEEDINGS APPENDIX.....	27

KCC 4843 (K-C 15,400)
PATENTTABLE OF AUTHORITIES

CASES

Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628,
631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)..... 7

MANUAL OF PATENT EXAMINING PROCEDURE

M.P.E.P. §2131..... 7

KCC 4843 (K-C 15,400)
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Tom K. Wentzel, et al. Art Unit: 3761
Serial No.: 10/032,383
Filed: December 21, 2001
Confirmation No.: 5427
For: DISPOSABLE ABSORBENT ARTICLE HAVING ONE PIECE MECHANICAL
FASTENING SYSTEM
Examiner: Michele Kidwell

January 27, 2006

APPEAL BRIEF

This is an appeal from the final rejection of the claims pending in the above-identified application as set forth in the final Office action dated September 8, 2005. A Notice of Appeal was filed on December 8, 2005.

I. REAL PARTY IN INTEREST

The real party in interest in connection with the present appeal is Kimberly-Clark Worldwide, Inc. of 401 N. Lake Street, Neenah, Wisconsin 54957-0349, a corporation of the state of Delaware, owner of a 100 percent interest in the pending application.

II. RELATED APPEALS AND INTERFERENCES

Appellant is unaware of any pending appeals or interferences which may be related to, directly affect or be directly affected by, or have a bearing on, the Board's decision in the pending appeal.

KCC 4843 (K-C 15,400)
PATENT

III. STATUS OF CLAIMS

Claims 3-5, 7-9, 11-16, 20, 26, 28-31, 33, 35, 52-55 and 62 are currently pending for consideration in the application. Claims 1, 6, 10, 23, 34, 36 and 57-60 and 65 have been cancelled and claims 2, 17-19, 21, 22, 24, 25, 27, 32, 37-51, 56, 61, 63 and 64 stand withdrawn from consideration. A copy of the pending claims appears in the Claims Appendix of this Brief.

Claims 3-5, 11-14, 16, 20, 26, 28, 29, 31, 33, 52-55 and 62 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,386,595 (Kuen et al.). Claims 7-9, 15, 30 and 35 stand rejected under 35 U.S.C. §103(a) as being obvious in view of Kuen et al.

The rejections of claims 7-9, 11-16, 26, 28-31, 33, 35 and 55 are being appealed.

IV. STATUS OF AMENDMENTS

Appellants filed an Amendment F and Response to Final Office Action dated October 31, 2005, the amendments therein not being entered pursuant to the Advisory Action dated November 21, 2005.

Appellants also filed an Amendment G After Final on December 15, 2005 to cancel claims 63 and 37-51, which depend from claim 63, as being drawn to a non-elected species. The Amendment G also sought to cancel claims 52 and 62 and add new claims 66 and 67 corresponding to claims 11 and 7 (which depend from claim 52), respectively, rewritten in independent form for the purpose of appeal. Additional claims were amended to depend from the new claims. The Examiner again refused to enter the amendments per the Advisory action dated January 19, 2006. Accordingly, the claims as referred to herein are in the

KCC 4843 (K-C 15,400)
PATENT

form considered in the final Office action dated September 8, 2005.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

With reference to the present specification and drawings, in one aspect the claimed subject matter is directed generally to a disposable absorbent article such as a diaper 1 or other disposable absorbent article. The absorbent article 1 comprises a first waist region, a second waist region and an intermediate or crotch region extending longitudinally between the first and second waist regions. Page 8, lines 17-19. The absorbent article 1 is foldable generally within the crotch region to configure the article with the first waist region in generally opposed relationship with the second waist region as illustrated in Fig. 2. The article 1 has an outer cover 17 (see page 9, line 13 - page 10, line 27) and at least one fastener (for example, fasteners 20 in Fig. 2 or single fastener 20 in Fig. 4). Page 15, line 6 - page 16, line 2; Page 18, lines 8-13. The at least one fastener 20 comprises a single piece of flexible material having an anchor end 77 (see, e.g., Fig. 2), a user end 79 opposite the anchor end, and an active fastening surface 13 extending continuously thereon. Page 16, lines 3-10; Page 16, line 29 - page 17, line 7, Fig. 2. At least a portion of the active fastening surface 13 is located generally at the anchor end 77 on the fastener 20 for

KCC 4843 (K-C 15,400)
PATENT

anchoring to the article generally at the first waist region and at least one other portion of the active fastening surface 13 is located generally at the user end 69 on the fastener 20 for fastening to the article generally at the second waist region to secure the article on a wearer. Page 16, line 29 - page 17, line 3. The active fastening surface 13 is substantially covered by an active fastening material, the portion at the anchor end 77 configured to have a first shear strength (e.g., when attached to the first waist region of the article) and the portion at the user end 79 configured to have a second shear strength (e.g., when attached to the second waist region), the first shear strength being greater than the second shear strength. Page 18, line 28 - Page 19, line 28; Page 23, line 17 - Page 24, line 7.

In another aspect, landing material (e.g. panels 23 illustrated in Fig. 3) generally at the first waist region to which the active fastening surface 13 of the at least one fastener 20 fastens and additional landing material (e.g. additional panels 23) located generally at the second waist region to which the active fastening surface of the at least one fastener also fastens to secure the article on a wearer. Page 17, line 21 - Page 18, line 7. The active fastening surface 13 of the at least one fastener 20 is covered substantially in entirety by an active fastening material different than the landing material 23. In particular, the active fastening material comprises one of a plurality of hooks and a plurality of loops, and the landing material comprises the other of a plurality of hooks and a plurality of loops. Id.

KCC 4843 (K-C 15,400)
PATENT

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Appellants appeal the rejection of claims 11-14, 16, 26, 28, 29, 31, 33, and 55 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,386,595 (Kuen et al.).

B. Appellants appeal the rejection of claims 7-9, 15 30 and 35 under 35 U.S.C. §103(a) as being obvious in view of U.S. Patent No. 5,386,595 (Kuen et al.).

VII. ARGUMENT

A. Claims 11-14, 16, 26, 28, 29, 31, 33 and 55 are unanticipated by and patentable over U.S. Patent No. 5,386,595 (Kuen et al.).

Claim 55

Claim 55 is directed to a disposable absorbent article comprising:

a first waist region;
a second waist region;
a crotch region extending longitudinally between the first and second waist regions, the absorbent article being foldable generally within the crotch region to configure said article with the first waist region in generally opposed relationship with said second waist region;

an outer cover; and

at least one fastener comprising a single piece of flexible material having an anchor end, a user end opposite the anchor end, and an active fastening surface extending continuously thereon, at least a portion of the active fastening surface being located generally at the anchor end on the fastener for anchoring to said article generally at said first waist region and at least one other portion of the active fastening material being located generally at the user end on

KCC 4843 (K-C 15,400)
PATENT

the fastener for fastening to said article generally at said second waist region to secure said article on a wearer, the active fastening surface being substantially covered by an active fastening material, the portion at the anchor end configured to have a first shear strength and the portion at the user end configured to have a second shear strength, the first shear strength being greater than the second shear strength.

As described in the present specification, the fastener is first attached at its anchor end to the first waist region (e.g., the back waist region) of the absorbent article. With the anchor end attached to the first waist region, the user end of the single piece fastener is pulled toward the second waist region (e.g., the front waist region) of the absorbent article to snugly fit the article about the wearer's waist. The user end of the fastener is then attached to the second waist region to secure the article on the wearer. See page 19, lines 17-21.

However, pulling on the user end of the single piece fastener in this manner creates a greater stress tension on the attached anchor end than on the user end. To prevent the anchor end of the fastener from peeling away and detaching from the second waist region, the anchor end may need to provide greater shear strength at its attachment with the article.

Page 19, lines 21-27. The present specification thus makes clear that 1) the anchor end and user end of the fastener are on the same single piece of material that extends from the first waist region to the second waist region; 2) the "shear strength" of the respective anchor end and user end as recited in claim 55 refers to the shear strength of the attachment between the anchor end and the first waist region of the article and between the user end and the second waist region of

KCC 4843 (K-C 15,400)
PATENT

the article, respectively; and 3) that the shear strength provided by the anchor end of the fastener is greater than the shear strength provided by the user end of the fastener.

To anticipate the claimed subject matter, a single cited reference must disclose, explicitly or inherently, each and every element of the claim.¹ Appellants submit that Kuen et al. fail to disclose or otherwise even suggest a disposable absorbent article that has a single piece fastener having a continuously extending active fastening surface, an anchor end and a user end, wherein the fastening surface at the anchor end is configured to have a first shear strength and the fastening surface at the user end is configured to have a second shear strength with the first shear strength being greater than the second shear strength.

Kuen et al. disclose (with respect to Fig. 7 thereof, as relied upon by the Examiner) a garment (70) having a garment attachment system. In the embodiment illustrated in Fig. 7, the garment attachment system includes two front hook patches (72A, 72B) secured to the front waist region of the garment and two back hook patches (74A, 74B) secured to the back waist region of the garment. A pair of strap members (76A, 76B) each have a looped material face (78) and a uniform width, for example, of 1 in. Column 14, lines 42-43 and lines 37-39. In use, the opposite ends of each strap (76A, 76B) are respectively attached to the hook patches at the front and back waist regions to secure the garment on the wearer.

Kuen et al. fail to disclose that the strap (e.g., strap 76A) has an anchor end configured to have a first shear

¹ M.P.E.P. §2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

KCC 4843 (K-C 15,400)
PATENT

strength and a user end configured to have a second shear strength wherein the first shear strength is greater than the second shear strength. In particular, Kuen et al. disclose (not only in the embodiment of Fig. 7, but in every embodiment of the reference) that the strap (76A) is constructed the same at both longitudinal ends. For example, in the embodiment of Fig. 7, the loop material is the same at both ends of the strap (76A). In the embodiments of Figs. 1 and 8, the hook material is the same size and configuration at both ends of the strap. See, e.g., column 10, lines 34-47 in which Kuen et al. teach that hook patches (56) at both ends of the strap secure to both attachment pads (42, 44, e.g., at the respective front and back waist regions of the garment) with the same total shear force.

Accordingly, the shear strength provided by the attachment of one end of the strap (76A) to the back waist region of the article is the same as the shear strength provided by the attachment of the opposite end of the strap to the front waist region. As such, the strap of Kuen et al. cannot have an anchor end and a user end with the shear strength provided by the anchor end upon attachment to the first waist region greater than the shear strength provided by the user end upon attachment to the second waist region as recited in claim 55.

In rejecting claim 55, the final Office action takes the position (at pages 5 and 6) that the garment of Kuen et al. must be identical to the absorbent article of claim 55 (e.g., the anchor end providing a shear strength greater than that of the user end) because otherwise a user would not be able to remove the fastener from the garment without also removing the fastener itself. The final Office action further states that the surface area of the back of the fastener (characterized as the anchor end) is different from the surface on the front of

KCC 4843 (K-C 15,400)
PATENT

the fastener (characterized as the user end) in that the user end of the fastener has a plurality of hooks joined thereto.

The final Office action fails to make clear (e.g., using reference numbers, drawings and/or citing to passages of the specification of Kuen et al.) what the Examiner is characterizing in Kuen et al. as the fastener, anchor end and user end recited in claim 55. While the final Office action asserts that each element of claim 55 is found in Kuen et al., there is no explanation at all as to what elements of Kuen et al. the Examiner equates to the elements recited in claim 55. As best understood, however, in referring to Fig. 7 it appears that the Examiner is taking the position that the fasteners 72A or 74A are characterized as the single piece fastener recited in claim 55, with the back surface of the fastener (the surface that is adhered to the outer cover of the garment) defining an anchor end of the fastener and the hook surface (i.e., the hooks that face outward away from the garment, to which the straps 76A, 76B fasten) defining a user end of the fastener. The fasteners 72A, 74A are the only fastener members in Figure 7 of Kuen et al. that have the hooks referred to by the Examiner, so it is assumed that is the fasteners 72A, 74A to which the Examiner is referring in rejecting claim 55.

This characterization, however, cannot be correct. Claim 55 particularly recites a single piece fastener that connects at its anchor end to the first waist region and at its opposite user end to the second waist region. The fasteners 72A, 74A in Fig. 7 of Kuen et al. cannot be a single piece fastener that connects to both the front and back waist regions of the garment. Rather, each is positioned only at the front waist region or the back waist region but does not extend over both the front and back waist regions. Moreover, the term "ends" in

KCC 4843 (K-C 15,400)
PATENT

claim 55 referring to the anchor end and user end (see, e.g., ends 77 and 79 in Figs. 2 and 3 of the present application) clearly refer to longitudinal ends of the fastener and not to front and back faces of the fastener as asserted by the Examiner. The only element of Kuen et al. that can be characterized as a single-piece fastener that connects to both the front and back waist regions is the strap (e.g., 76A, 76B). However, as noted above, the strap is of the same construction at its opposite ends and therefore cannot provide the shear strength differential between its ends as recited in claim 55.

For the above reasons, claim 55 is submitted to be unanticipated by and patentable over Kuen et al.

Claims 28, 29, 31, 33, and 35 depend either directly or indirectly from claim 55 and are submitted to be unanticipated by and patentable over Kuen et al. for the same reasons as claim 55.

Claim 11

Claim 11 depends directly from independent claim 52 and together with all of the limitations from claim 52 is directed to a disposable absorbent article comprising:

a first waist region;

a second waist region;

a crotch region extending longitudinally between the first and second waist regions, the absorbent article being foldable generally within the crotch region to configure said article with the first waist region in generally opposed relationship with the second waist region; and

at least one fastener comprising a single piece of flexible material having an active fastening surface extending continuously thereon, at least a portion of the active

KCC 4843 (K-C 15,400)
PATENT

fastening surface being located on the fastener for anchoring to said article on landing material located generally at said first waist region and at least one other portion of the active fastening material being located on the fastener for fastening to said article on landing material located generally at said second waist region to secure said article on a wearer, the active fastening surface being covered substantially in entirety by an active fastening material different than said landing material, the active fastening material comprising one of a plurality of hooks and a plurality of loops, the landing material comprising the other of a plurality of hooks and a plurality of loops,

wherein the at least one fastener comprises an anchor end configured to provide a first shear strength and a user end configured to provide a second shear strength, the ends differing such that the first shear strength is greater than the second shear strength.

Claim 11 is similar to claim 55, with the additional recitation of the landing material on the front and back waist regions to which the at least one fastener attaches. Accordingly, claim 11 is submitted to be unanticipated by and patentable over Kuen et al. for substantially the same reasons as claim 55. That is, Kuen et al. fail to show or otherwise even suggest a single piece fastener having a continuously extending active fastening surface, an anchor end and a user end, wherein the fastening surface at the anchor end is configured to have a first shear strength and the fastening surface at the user end is configured to have a second shear strength with the first shear strength being greater than the second shear strength.

KCC 4843 (K-C 15,400)
PATENT

Claims 12-14 and 16 depend directly or indirectly from claim 11 and are therefore submitted to be unanticipated by and patentable over Kuen et al. for the same reasons as claim 11.

B. Claims 7-9, 15, 30 and 35 are non-obvious in view of and patentable over U.S. Patent No. 5,386,595 (Kuen et al.).

Claims 30 and 35 depend directly or indirectly from claim 55 and are submitted to be non-obvious and patentable over Kuen et al. for the reasons set forth above in connection with the patentability of claim 55.

Claim 7

Claim 7 depends directly from claim 52 and together with all of the limitations of claim 52 is directed to a disposable absorbent article comprising:

a first waist region;

a second waist region;

a crotch region extending longitudinally between the first and second waist regions, the absorbent article being foldable generally within the crotch region to configure said article with the first waist region in generally opposed relationship with the second waist region; and

at least one fastener comprising a single piece of flexible material having an active fastening surface extending continuously thereon, at least a portion of the active fastening surface being located on the fastener for anchoring to said article on landing material located generally at said first waist region and at least one other portion of the active fastening material being located on the fastener for fastening to said article on landing material located generally at said

KCC 4843 (K-C 15,400)
PATENT

second waist region to secure said article on a wearer, the active fastening surface being covered substantially entirely by an active fastening material different than said landing material, the active fastening material comprising a plurality of hooks and the landing material comprising a plurality of loops. (emphasis added).

Claim 7 is submitted to be non-obvious in view of and patentable over Kuen et al. in that Kuen et al. fail to show or suggest an absorbent article that includes a single piece fastener having a continuously extending active fastening surface in which a first portion of the fastener fastens to landing material located at a first waist region of the article and a second portion of the fastener fastens to landing material located a second waist region of the article, wherein the active fastening material comprises a plurality of hooks and the landing material comprises a plurality of loops.

As acknowledged by the Examiner in her rejection of claim 7, Kuen et al. do not teach a single piece fastener that fastens to both the front and back waist regions of the article wherein the active fastening material of the fastener comprises a plurality of hooks. See Page 7 of the final Office action. Instead, Kuen et al. disclose in Fig. 7 (as relied on by the Examiner) the active fastening material comprising a plurality of loops that cover the entire surface of the straps (76A, 76B). Moreover, Kuen et al disclose in the embodiments of Figs. 1 and 8 that the strap (e.g., straps 40A, 40B) may instead have hook patches 56 at the ends of the strap. The hook patches do not cover the entire active surface of the strap. There is no suggestion found anywhere in Kuen et al. for covering the entire active surface of the strap with hooks in the same manner as the loops in the embodiment of Fig. 7.

KCC 4843 (K-C 15,400)
PATENT

This is because the strap and garment of Kuen et al. are configured such that the active (e.g., inward facing) surface of the strap faces the wearer once the strap is attached to the garment. If the entire active surface of the strap were covered with hooks, the hooks along the portion of the strap between the front and back of the garment (e.g., exposed to the wearer) would rub against and irritate the wearer. Thus, one would not be motivated by Kuen et al. to cover the entire active surface of the strap with a plurality of hooks as recited in claim 7.

For these reasons, claim 7 is submitted to be non-obvious in view of and patentable over Kuen et al.

Claims 8-9 and 15 depend directly or indirectly from claim 7 and are submitted to non-obvious in view of and patentable over Kuen et al. for the same reasons as claim 7.

Claim 35

Claim 35 depends directly from claim 55 and further recites that the active fastening material comprises a plurality of hooks. In the final Office action, the Office rejects claim 35 for the same reasons that it rejected claim 7. In particular, the Office takes the position that Kuen et al. disclose the active fastening material as comprising a plurality of loops. Thus, the Examiner is characterizing the straps (76A, 76B) comprised of continuous loop material as the active fastening material. However, this position is contrary to the position the Examiner took in rejecting claim 55 from which claim 35 depends. See pages 5 and 6 of the final Office action in which the Examiner takes the position (as best understood) that the fasteners (72A, 72B) having hooks thereon comprise the active fastening material. Appellants submit that

KCC 4843 (K-C 15,400)
PATENT

in rejecting a dependent claim the Examiner cannot adapt a characterization of the prior art that is contrary to that asserted in rejecting an independent claim from which the dependent claim depends.

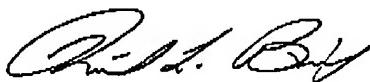
In addition, claim 35 is further submitted to be non-obvious in view of and patentable over Kuen et al. for the same reasons set forth above in connection with claim 7.

VIII. CONCLUSION

For the reasons stated above, appellants respectfully request that the Office's rejections of claims 7-9, 11-16, 26, 28-31, 33, 35 and 55 be reversed.

The Commissioner is hereby authorized to charge the fee for the appeal brief in the amount of \$500 to Deposit Account No. 19-1345. The Commissioner is hereby authorized to charge any additional fees which may be required to Deposit Account No. 19-1345.

Respectfully submitted,



Richard L. Bridge, Reg. No. 40,529
SENNIGER POWERS
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
(314) 231-5400

RLB/tmg

VIA FACSIMILE (571) 273-8300

KCC 4843 (K-C 15,400)
PATENT

CLAIMS APPENDIX

1. (Canceled)
2. (Withdrawn) The disposable absorbent article of claim 52, wherein said article is an incontinence product.
3. (Previously presented) The disposable absorbent article of claim 52, wherein said article is a diaper.
4. (Previously presented) The disposable absorbent article of claim 52, wherein the at least one fastener comprises one of a generally rectangular shape, square shape, circular shape, triangular shape, oval shape, linear shape and a combination thereof.
5. (Previously presented) The disposable absorbent article of claim 52, wherein the at least one fastener is generally rectangular in shape.
6. (Canceled)
7. (Previously presented) The disposable absorbent article of claim 52, wherein the active fastening material comprises a plurality of hooks.
8. (Previously presented) The disposable absorbent article of claim 7, wherein the plurality of hooks are configured in rows of about 4 rows of hooks/cm² to about 30 rows of hooks/cm² independently in at least one of the machine direction and the cross machine direction.
9. (Previously presented) The disposable absorbent article of claim 7, wherein the plurality of hooks have a density of about 100 hooks/cm² to about 750 hooks/cm² independently in at least one of the machine direction and the cross machine direction.

KCC 4843 (K-C 15,400)
PATENT

10. (Canceled)

11. (Previously presented) The disposable absorbent article of claim 52, wherein the at least one fastener comprises an anchor end configured to have a first shear strength and a user end configured to have a second shear strength, the ends differing such that first shear strength is greater than the second shear strength.

12. (Previously presented) The disposable absorbent article of claim 11, wherein the portion of active fastening material at the anchor end and the portion of the active fastening material at the user end have different surface areas corresponding to said first and second shear strengths.

13. (Previously presented) The disposable absorbent article of claim 12, wherein said first shear strength at the anchor end of the at least one fastener is greater than 3,000 grams tensile.

14. (Previously presented) The disposable absorbent article of claim 12, wherein the surface area of active fastening material of the anchor end of the at least one fastener has a size about 3 times larger than the surface area of active fastening material of the user end.

15. (Previously presented) The disposable absorbent article of claim 12, wherein said second shear strength at the user end of the at least one fastener is greater than 2,000 grams tensile.

16. (Previously presented) The disposable absorbent article of claim 12 wherein the anchor end has a length of about 0.75 to about 1.25 inches and a width of about 1.5 to

KCC 4843 (K-C 15,400)
PATENT

about 4.0 inches, and wherein the user end has a width of about 0.75 to about 2.0 inches.

17. (Withdrawn) The disposable absorbent article of claim 11, further comprising an outer cover having an outside surface, and wherein the anchor end of the at least one fastener is affixed to the outside surface of the outer cover by at least one of thermal point bonding, ultrasonic bonding and adhesive bonding.

18. (Withdrawn) The disposable absorbent article of claim 17, wherein the adhesive bonding may be applied by a pattern of at least one of an adhesive bead, line, swirl and dot independently in at least one of the machine direction and the cross machine direction.

19. (Withdrawn) The disposable absorbent article of claim 18, wherein the at least one adhesive bead is less than about 0.25 inches in width.

20. (Previously presented) The disposable absorbent article of claim 52, further comprising an outer cover, and wherein said landing material comprises an active landing material located on the outer cover.

21. (Withdrawn) The disposable absorbent article of claim 52, further comprising an outer cover, and wherein the outer cover comprises at least one attachment panel.

22. (Withdrawn) The disposable absorbent article of claim 21, wherein the at least one attachment panel comprises loop material.

23. (Canceled)

KCC 4843 (K-C 15,400)
PATENT

24. (Withdrawn) The disposable absorbent article of claim 55, wherein the pair of ears comprise an elastomeric material.

25. (Withdrawn) The disposable absorbent article of claim 24, wherein the elastomeric material is a neck bonded laminate (NBL).

26. (Previously Presented) The disposable absorbent article of claim 55, wherein the at least one fastener comprises an anchor end and a user end.

27. (Withdrawn) The disposable absorbent article of claim 26, wherein the anchor end of the at least one fastener is reinforced with glue.

28. (Original) The disposable absorbent article of claim 26, wherein the anchor end of the at least one fastener has a shear strength of greater than 3,000 grams tensile.

29. (Original) The disposable absorbent article of claim 26, wherein the anchor end of the at least one fastener has a length of about 0.75 to about 1.25 inches and a width of about 1.5 to about 4.0 inches.

30. (Original) The disposable absorbent article of claim 26, wherein the user end of the at least one fastener has a shear strength of greater than 2,000 grams tensile.

31. (Original) The disposable absorbent article of claim 26, wherein the user end of the at least one fastener has a width of about 0.75 to about 2.0 inches.

32. (Withdrawn) The disposable absorbent article of claim 55, wherein said article is an incontinence product.

33. (Previously presented) The disposable absorbent article of claim 55, wherein said article is a diaper.

KCC 4843 (K-C 15,400)
PATENT

34. (Canceled)
35. (Previously presented) The disposable absorbent article of claim 55, wherein the active fastening material comprises a plurality of hooks.
36. (Canceled)
37. (Withdrawn) The disposable absorbent article of claim 63, wherein said article is an incontinence product.
38. (Withdrawn) The disposable absorbent article of claim 63, wherein said article is a diaper.
39. (Withdrawn) The disposable absorbent article of claim 63, wherein the active fastening surface of the at least one single piece of flexible material is substantially covered by active fastening material.
40. (Withdrawn) The disposable absorbent article of claim 39, wherein the active fastening material comprises a plurality of hooks.
41. (Withdrawn) The disposable absorbent article of claim 63, wherein the outer cover comprises a pair of ears.
42. (Withdrawn) The disposable absorbent article of claim 41, wherein the pair of ears comprise an elastomeric material.
43. (Withdrawn) The disposable absorbent article of claim 42, wherein the elastomeric material is a neck bonded laminate (NBL).
44. (Withdrawn) The disposable absorbent article of claim 63, wherein the at least one fastener comprises an anchor end and a user end.

KCC 4843 (K-C 15,400)
PATENT

45. (Withdrawn) The disposable absorbent article of claim 44, wherein the anchor end of the at least one fastener is affixed to the at least one outside surface of the outer cover by at least one of thermal point bonding, ultrasonic bonding and adhesive bonding.

46. (Withdrawn) The disposable absorbent article of claim 45, wherein the adhesive bonding may be applied as at least one of an adhesive bead, line, swirl and dot independently in at least one of the machine direction and the cross machine direction.

47. (Withdrawn) The disposable absorbent article of claim 46, wherein the at least one adhesive bead is less than about 0.25 inches in width.

48. (Withdrawn) The disposable absorbent article of claim 44, wherein the anchor end of the at least one fastener has a shear strength of greater than 3,000 grams tensile.

49. (Withdrawn) The disposable absorbent article of claim 44, wherein the anchor end of the at least one fastener has a length of about 0.75 to about 1.25 inches and a width of about 1.5 to about 4.0 inches.

50. (Withdrawn) The disposable absorbent article of claim 44, wherein the user end of the at least one fastener has a shear strength of greater than 2,000 grams tensile.

51. (Withdrawn) The disposable absorbent article of claim 44, wherein the user end of the at least one fastener has a width of about 0.75 to about 2.0 inches.

KCC 4843 (K-C 15,400)
PATENT

52. (Previously presented) A disposable absorbent article comprising:

a first waist region;

a second waist region;

a crotch region extending longitudinally between the first and second waist regions, the absorbent article being foldable generally within the crotch region to configure said article with the first waist region in generally opposed relationship with the second waist region; and

at least one fastener comprising a single piece of flexible material having an active fastening surface extending continuously thereon, at least a portion of the active fastening surface being located on the fastener for anchoring to said article on landing material located generally at said first waist region and at least one other portion of the active fastening material being located on the fastener for fastening to said article on landing material located generally at said second waist region to secure said article on a wearer, the active fastening surface being covered substantially in entirety by an active fastening material different than said landing material, the active fastening material comprising one of a plurality of hooks and a plurality of loops, the landing material comprising the other of a plurality of hooks and a plurality of loops.

53. (Previously presented) A disposable absorbent article as set forth in claim 52 wherein said article has an inner surface adapted for contiguous relationship with the body of the wearer and an outer surface, the at least one fastener being adapted for anchoring to the outer surface of said

KCC 4843 (K-C 15,400)
PATENT

article generally at said first waist region and for fastening to said outer surface at said second waist region to secure said article on the wearer.

54. (Previously presented) A disposable absorbent article as set forth in claim 52 further comprising a liner defining the inner surface of said article, an outer cover in opposed relationship with the liner and defining the outer surface of said article, and an absorbent core between the liner and the outer cover.

55. (Previously presented) A disposable absorbent article comprising:

a first waist region;

a second waist region;

a crotch region extending longitudinally between the first and second waist regions, the absorbent article being foldable generally within the crotch region to configure said article with the first waist region in generally opposed relationship with second waist region;

an outer cover; and

at least one fastener comprising a single piece of flexible material having an anchor end, a user end opposite the anchor end, and an active fastening surface extending continuously thereon, at least a portion of the active fastening surface being located generally at the anchor end on the fastener for anchoring to said article generally at said first waist region and at least one other portion of the active fastening material being located generally at the user end on the fastener for fastening to said article generally at said second waist region to secure said article on a wearer, the

KCC 4843 (K-C 15,400)
PATENT

active fastening surface being substantially covered by an active fastening material, the portion at the anchor end configured to have a first shear strength and the portion at the user end configured to have a second shear strength, the first shear strength being greater than the second shear strength.

56. (Withdrawn) The disposable absorbent article of claim 55 further comprising a pair of ears generally at the first waist region, and wherein the ears are formed integrally with the outer cover at the first waist region of said article.

57. (Canceled)

58. (Canceled)

59. (Canceled)

60. (Canceled)

61. (Withdrawn) The disposable absorbent article as set forth in claim 63 wherein said active fastening material of said at least one fastener comprises a plurality of hooks, said hooks being fastenably engageable with the article at said first waist region.

62. (Previously presented) A disposable absorbent article having a longitudinal direction and a lateral direction, said article comprising:

a first waist region;

a second waist region;

a crotch region extending longitudinally between the first and second waist regions, the absorbent article being foldable generally within the crotch region to configure said article with the first waist region in generally opposed relationship with the second waist region; and

KCC 4843 (K-C 15,400)
PATENT

at least one fastener comprising a single piece of flexible material having an active fastening surface extending continuously thereon, at least a portion of the active fastening surface being located on the fastener for fastening to said article on landing material located generally at said first waist region and at least one other portion of the active fastening material being located on the fastener for fastening to said article on landing material located generally at said second waist region to secure said article on a wearer, the active fastening surface comprising an active fastening material different than said landing material, the active fastening material comprising one of a plurality of hooks and a plurality of loops, the landing material comprising the other of a plurality of hooks and a plurality of loops, said fastening material being releasably engageable with the landing material of the article.

63. (Withdrawn) A disposable absorbent article comprising:

a first waist region;

a second waist region;

a crotch region extending longitudinally between the first and second waist regions, the absorbent article being foldable generally within the crotch region to configure said article with the first waist region in generally opposed relationship with second waist region; and

at least one fastener comprising a single piece of flexible material comprising an active fastening material; and

an adhesive on one of the fastener, first region, and second waist region;

KCC 4843 (K-C 15,400)
PATENT

wherein a first portion of the active fastening material is located on the fastener for fastening engagement with said article generally at said first waist region and a second portion of the active fastening material being is located on the fastener for fastening engagement with said article generally at said second waist region to secure said article on a wearer, said fastener being affixed to said article generally at said first portion of the active fastening material by both said active fastening material and by the adhesive which augments said active fastening material.

64. (Withdrawn) A disposable absorbent article as set forth in claim 63 wherein the fastener is bonded to said article generally at said first waist region.

65. (Canceled)

JAN-27-2006 FRI 04:06 PM SENNIGER POWERS

FAX NO. 3142314342

P. 32/32

KCC 4843 (K-C 15,400)
PATENT

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.

**This Page is Inserted by IFW Indexing and Scanning
Operations and is not part of the Official Record**

BEST AVAILABLE IMAGES

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- BLACK BORDERS**
- IMAGE CUT OFF AT TOP, BOTTOM OR SIDES**
- FADED TEXT OR DRAWING**
- BLURRED OR ILLEGIBLE TEXT OR DRAWING**
- SKEWED/SLANTED IMAGES**
- COLOR OR BLACK AND WHITE PHOTOGRAPHS**
- GRAY SCALE DOCUMENTS**
- LINES OR MARKS ON ORIGINAL DOCUMENT**
- REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY**
- OTHER:** _____

IMAGES ARE BEST AVAILABLE COPY.

As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.